

**FUNDING AND USE AGREEMENT FOR  
MC NICOL MIDDLE BASKETBALL FIELD LIGHTING**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**CITY OF HOLLYWOOD**

(hereinafter referred to as "CITY"),  
a municipal corporation operating and  
existing under the Laws of the State of Florida,  
whose principal place of business is  
2600 Hollywood Boulevard, Hollywood, Florida 33022

**WHEREAS**, SBBC and the CITY have enjoyed a mutually beneficial relationship over the past several years and are both interested in and concerned with the development and provision of adequate parks and recreational facilities for interscholastic sports, intramural sports, physical education programs, leisure and use by both students and the local community; and

**WHEREAS**, SBBC and the CITY desire to fund and install sports lighting on outside basketball courts located at the school grounds of McNicol Middle, contiguous to the CITY's community center; and

**WHEREAS**, SBBC and the CITY believe that an arrangement whereby SBBC permits certain uses of its athletic and recreational areas by CITY will be of mutual benefit to all parties and will serve a public need and benefit the citizens of the CITY and those students served by the school sites to be improved; and

**WHEREAS**, the CITY is desirous of working together with the SBBC to construct said athletic facility; and

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows

## **ARTICLE 1 – RECITALS**

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## **ARTICLE 2 – PROJECT AND FUNDING**

2.01 **Project.** SBBC as the Project and Construction Manager will make or cause to be made lighting improvements to the outside basketball courts as more fully described in Exhibit “A.” SBBC will assign a project manager from its staff to manage the installation of sports field lighting and security fencing.

2.02 **Project Funding.** The sports field lighting and perimeter fencing shall be funded as follows:

(a) **SBBC Funding.** SBBC agrees to fund certain improvements including security fencing and Musco Lighting as described in Exhibit “B,” which is attached hereto and specifically incorporated into this Agreement (SBBC Improvements). SBBC shall hire the contractor for the installation of sports field lighting and perimeter fencing.

(b) **CITY Funding.** CITY agrees to pay to SBBC the sum of five thousand dollars (\$5,000) for perimeter/security fencing to be installed by SBBC around the basketball courts.

2.03 **Plans.** As the Construction Manager, SBBC will prepare or cause to be prepared, the construction plans for the project (the Plans).

2.04. **Inspection.** SBBC agrees to perform all planning, zoning, engineering design, permitting and inspections for the project.

## **ARTICLE 3 – SPECIAL CONDITIONS**

3.01 **Leased Premises.** SBBC does hereby lease to the CITY all of the athletic and recreational facilities (hereinafter referred to as “Leased Premises”) that are more fully described in Exhibit “A” which is appended hereto and incorporated herein by reference.

3.02 **Lease Term and Rate.** The term of this Agreement is twenty-five (25) years from the date of the execution of this Agreement. The CITY shall pay SBBC an annual rental fee of One Dollar (\$1.00), payable to SBBC on the yearly anniversary of this Agreement. It is specifically understood and agreed by the parties hereto that the term of this Agreement may be shortened or extended, subject to the provisions of Sections 3.10.

3.03 **Use of Leased Premises.** The CITY may utilize the Leased Premises for recreational purposes subject to the limitations contained in this Agreement. The

CITY's use of the Leased Premises shall not conflict in any way with SBBC's use of its school sites for the delivery of academic and athletic programs. The CITY's use of the Leased Premises shall at all times be in compliance with the laws of the State of Florida concerning the use of school property.

3.04 **Advertising.** The CITY may not erect advertising on the Leased Premises without obtaining the prior written consent of the principal of the school upon which the Leased Premises are located.

3.05 **Rental of Leased Premises.** The CITY may not rent the Leased Premises for the use of third persons without obtaining the prior written consent of the principal or designee of the school upon which the Leased Premises are located.

3.06 **Operation and Control.** The Leased Premises are reserved for the sole use and control of the SBBC during the hours that the school, upon which the Leased Premises is located, is in session and during the hours of any interscholastic/intramural practices and contests. The Principal or his/her designee shall maintain a schedule of school events and practices conducted on the Leased Premises. During off school hours the Leased Premises shall be officially open to the CITY. During the hours that the Leased Premises is being used by the CITY, the CITY shall provide supervision by recreational personnel or CITY staff. During the term of this lease, the CITY shall fund the electric consumption resulting from the use of the basketball sports lights at McNicol Middle School.

3.07 **Clean-up.** It shall be the responsibility of SBBC to keep the Leased Premises clean, sanitary, and free from trash and debris. Notwithstanding any of the provisions of this section, the parties agree that the CITY will clean up the Leased Premises after each CITY use and after each CITY sponsored event. SBBC will be responsible for cleaning of the Leased Premises after each SBBC use and after each SBBC sponsored event. The CITY may pay SBBC the contractual hourly rate applicable for SBBC custodial service personnel to clean up the Leased Premises after CITY use or after a CITY sponsored event.

3.08 **Maintenance.** It shall be the responsibility of SBBC to keep the Leased Premises in a clean, safe and sanitary condition. However, the CITY shall be responsible for ensuring that the Leased Premises are left in the same condition as prior to usage, allowing for normal wear and tear. The CITY is responsible for repairing or replacing any recreational equipment, fixtures, improvements or grounds upon the Leased premises that are damaged as a result of CITY use. The regular upkeep and maintenance of the Leased Premises shall be SBBC's responsibility.

3.09 **Termination by SBBC.** SBBC may terminate this Agreement or terminate the CITY's right to use any portion of the Leased Premises, without cause and for any reason, upon provision to the CITY of one hundred and eighty (180) days written notice of such termination. In the event of such termination, SBBC shall reimburse the CITY for the then remaining value of the CITY funded Improvements.

3.10 **Termination by CITY.** The CITY may terminate this Agreement, without cause and for any reason, upon provision to SBBC of one hundred eighty (180) days written notice of such termination.

## **ARTICLE 4 – GENERAL CONDITIONS**

4.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

4.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

4.03 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

4.04 **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

4.05 **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

4.06 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

4.07 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

4.08 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement

and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

4.09 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

4.10 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

4.11 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4.12 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

4.13 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotion, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

4.14 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

4.15 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

4.16 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Damian Huttenhoff, Director  
Student Support  
600 Southeast Third Avenue, Third Floor  
Fort Lauderdale, Florida 33301

To CITY: City Manager  
City of Hollywood  
2600 Hollywood Boulevard  
Hollywood, Florida 33022

With a Copy to: City Attorney  
Office of the City Attorney  
2600 Hollywood Boulevard  
Hollywood, Florida 33022

Director of Parks, Recreation and Cultural Arts  
1405 S. 28<sup>th</sup> Avenue  
Hollywood, Florida 33022

4.17 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

4.18 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FUNDING AND USE AGREEMENT FOR MC NICOL  
BASKETBALL FIELD LIGHTING BETWEEN  
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
AND  
THE CITY OF HOLLYWOOD, FLORIDA

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By \_\_\_\_\_  
Benjamin J. Williams, Chair

ATTEST:

\_\_\_\_\_  
James F. Notter  
Superintendent of Schools

Approved as to Form and Legal Content:

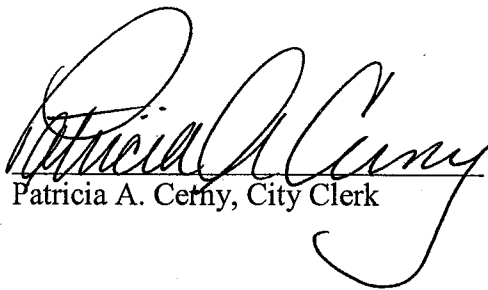
  
\_\_\_\_\_  
School Board Attorney


FUNDING AND USE AGREEMENT FOR MC NICOL  
BASKETBALL FIELD LIGHTING BETWEEN  
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
AND  
THE CITY OF HOLLYWOOD, FLORIDA

**FOR CITY OF HOLLYWOOD**

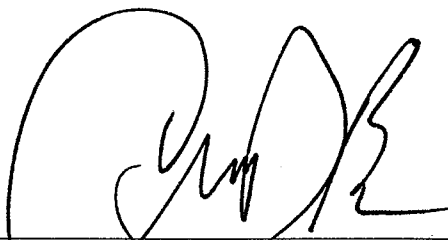
CITY OF HOLLYWOOD, through its  
City Commission

ATTEST

  
Patricia A. Cerny, City Clerk

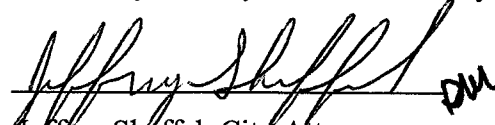
By:   
Peter J.M. Bober, Mayor

1 day of December, 2010

By:   
Cameron Benson, City Manager

29 day of November, 2010

Approved as to form and legality by  
Office of the City Attorney for the use of  
And reliance by the City of Plantation only

By:   
Jeffrey Sheffel, City Attorney

       day of       , 2010

(CITY SEAL)



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BASKETBALL FIELD LIGHTING BETWEEN  
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
AND  
THE CITY OF HOLLYWOOD, FLORIDA

**EXHIBIT A**

**McNicol Middle School  
1602 S. 27<sup>th</sup> Avenue  
Hollywood, Florida 33020**

**Three outside basketball courts, track, and open field at northeast corner of property, including baseball field.**

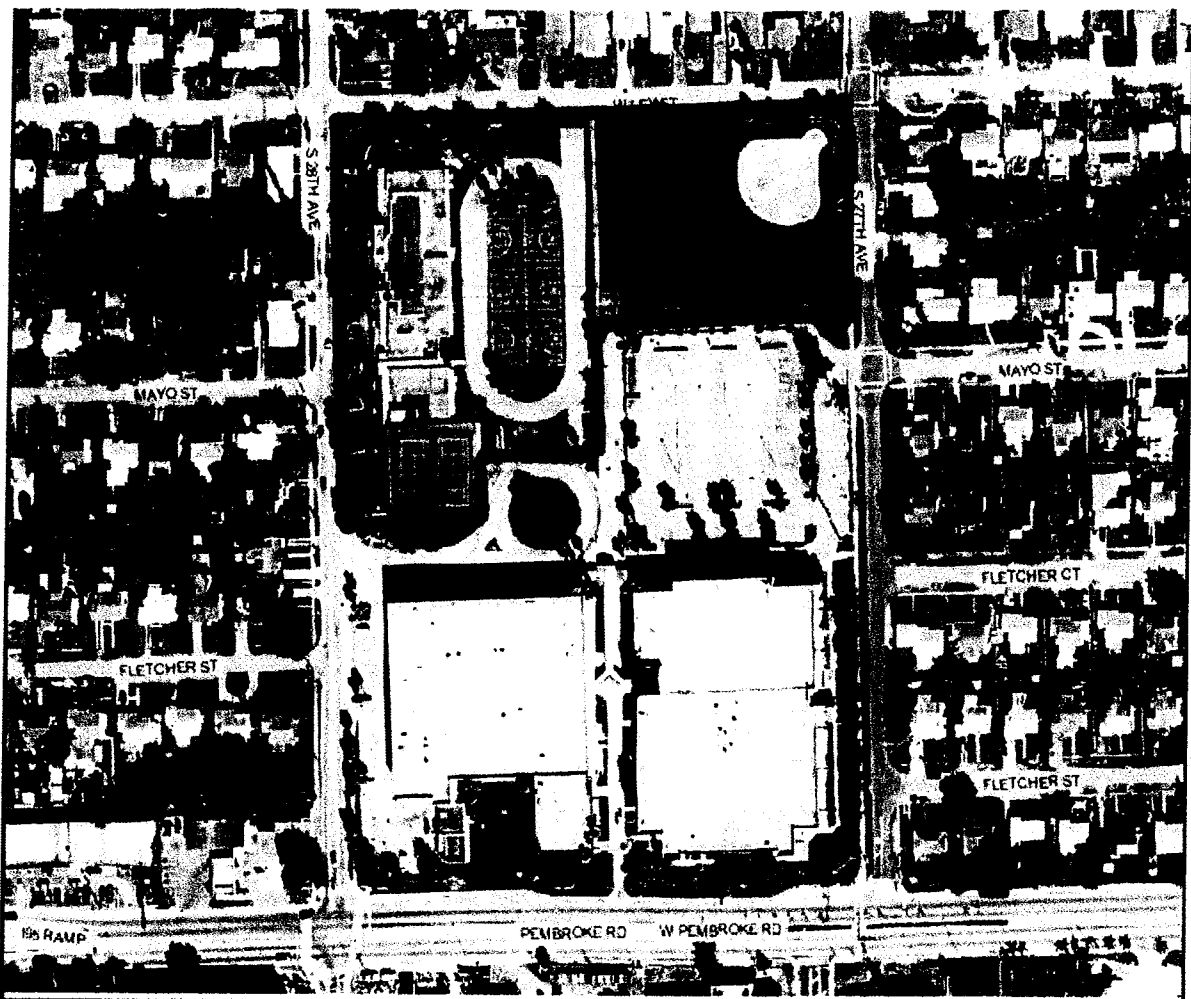


Exhibit A

FUNDING AND USE AGREEMENT FOR MC NICOL  
BASKETBALL FIELD LIGHTING BETWEEN  
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
AND  
THE CITY OF HOLLYWOOD, FLORIDA

**EXHIBIT B**

**SBBC FUNDED IMPROVEMENTS**

**Outside Basketball Courts Sports Lighting at McNicol Middle School**

**McNicol Middle School  
1602 S. 27<sup>th</sup> Avenue  
Hollywood, Florida 33020**

<b>Musco Light Structure Area</b> <ul style="list-style-type: none"><li>• Pre-cast concrete bases</li><li>• Galvanized steel poles</li><li>• UL Listed remote electrical component enclosures</li><li>• Pole length wire harnesses</li><li>• Factory-aimed and assembled luminaries</li></ul>	<b>\$80,000</b>
<b>Perimeter Security Fencing</b>  Surround the outside courts and applicable parking areas	<b>\$10,000</b>